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In The

Supreme Court of the United States

OCTOBER TERM, 1990

R.A.V., *Petitioner,*

v.

ST. PAUL, MINNESOTA, *Respondent.*

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On Writ of Certiorari to the Supreme Court of Minnesota

BRIEF OF THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, THE ASIAN LAW CAUCUS, THE ASIAN PACIFIC AMERICAN LEGAL CENTER, AND THE NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

ANGELO N. ANCHETA*
KATHRYN K. IMAHARA
ASIAN PACIFIC AMERICAN LEGAL CENTER OF SOUTHERN CALIFORNIA
1010 South Flower Street, Suite 302
Los Angeles, California 90015
(213) 748-2022

KAREN K. NARASAKI
NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION
PERKINS COIE
1201 Third Avenue, 40th Floor
Seattle, Washington 98101

DENNIS HAYASHI
DOREENA WONG
ASIAN LAW CAUCUS, INC.
468 Bush Street, 3rd Floor
San Francisco, California 94108

STANLEY MARK
ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
99 Hudson Street, 12th Floor
New York, New York 10013

** Counsel of Record*

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INTEREST OF *AMICI CURIAE*

Pursuant to Supreme Court Rule 37, the Asian American Legal Defense and Education Fund, the Asian Law Caucus, Inc., the Asian Pacific American Legal Center of Southern California, and the National Asian Pacific American Bar Association submit this brief as *amici curiae* in support of respondent, the City of St. Paul, Minnesota. Counsel for both parties have consented to the submission of this brief; letters

of consent have been filed with the Clerk of the Court.

The four *amici curiae* are organizations dedicated to the protection of civil rights for the Asian and Pacific Islander communities in the United States. All four *amici* have advocated for the passage of hate crimes legislation, and are active members of the National Network Against Anti-Asian Violence, a coalition of organizations that monitor and respond to incidents of hate violence throughout the country.

Founded in 1974, the Asian American Legal Defense and Education Fund (AALDEF) is a civil rights organization that addresses critical issues facing Asian Pacific Americans through community education, advocacy, and litigation. AALDEF's program priorities include the elimination of anti-Asian violence, immigrant rights, voting rights, employment and labor rights, and redress for Japanese Americans who were incarcerated in camps within the United States during World War II.

The Asian Law Caucus, Inc. (ALC) is a nonprofit, public interest legal organization whose mission is to promote, advance, and represent the legal and civil rights of the Asian and Pacific Islander communities. Since 1972, the ALC has provided free to low-cost multilingual legal services and community education in the areas of immigration, housing, employment and labor, and civil rights. In recognition of the growing problem of anti-Asian violence, the ALC established the Hate Violence Project, a comprehensive program that assists victims of hate crimes and seeks to reduce the incidence of such crimes in the Asian community through legal assistance, education, and advocacy.

The Asian Pacific American Legal Center of Southern California (APALC) is a nonprofit legal organization dedicated to serving the Asian and Pacific Islander communities through direct legal services, community education, leadership development, and advocacy. Founded in 1983, the APALC provides multilingual, culturally sensitive legal and

educational services, with programs focusing on immigration, family law, language rights, interethnic relations, dispute resolution, and civil rights advocacy.

Together, AALDEF, ALC, and APALC constitute the National Asian Pacific American Legal Consortium, an organization whose mission is to promote, advance, and represent the legal and civil rights of the Asian and Pacific Islander communities through collaborative efforts and the formation of a national legal structure that pursues litigation, advocacy, education, and public policy development.

The National Asian Pacific American Bar Association (NAPABA) is a nationwide, nonprofit, nonpartisan organization of Asian Pacific American attorneys. Founded in 1989, NAPABA has over 2500 members and is dedicated to serving the needs of Asian Pacific American attorneys and their communities. Since its inception, stemming the rising tide of racial violence, particularly anti-Asian violence, has been one of NAPABA's top priorities. It has produced educational materials on racial violence and its members have testified on behalf of hate crimes legislation and have been available as a resource to victims, families of victims, and communities affected by incidents of hate crimes.

This case raises issues of significant concern to *amici* and the individuals they represent. While *amici* are vigorous defenders of civil liberties, including freedom of speech, *amici* believe that legislative efforts such as the St. Paul ordinance are necessary in the fight to deter racial and religious violence. Expression that exceeds offensiveness and mere unpopularity, but which in itself constitutes a violent act and has the immediate potential to incite others to commit violence, is simply not protected speech.

SUMMARY OF ARGUMENT

Because of the traumatic effects that acts of racial violence have on both victims and the communities in which they live, and because of the long history of racial discrimination in the United States, there is a compelling governmental interest in eliminating racial violence. Although cross burning is usually identified with violence against African Americans, other people of color have been subjected to similar acts of intimidation. Within recent years, several incidents of cross burnings targeted against Asians and Pacific Islanders have been reported across the nation.

With the dramatic growth of the Asian and Pacific Islander populations in the United States has come the sobering reality that hate crimes against these communities have increased as well. Throughout the country, reports of hate crimes against Asians and Pacific Islanders have risen at a rate faster than any other ethnic group. This violence has covered the gamut of cross burnings, racial slurs, graffiti, vandalism, beatings, shootings, and killings. The violence has not been limited to individuals and their homes, and has included places of religious worship, businesses, and even college campuses.

In response to the proliferation of racial violence, legislatures at the local, state, and federal levels have enacted laws that monitor hate crimes and prohibit specific acts of violence. A common legislative scheme is one that outlaws cross burnings and other forms of intimidation or harassment. Hate crimes laws send a clear message that racial violence is intolerable and that all citizens and residents must be free from intimidation and hatred. Protecting all members of society from violence is thus a compelling state interest and must be the impetus for enacting and upholding statutes that address hate crimes.

The City of St. Paul, Minnesota has recognized the problem of racial and religious violence and has enacted hate

crimes legislation to address the problem. St. Paul's bias-motivated disorderly conduct statute was enacted precisely to punish the conduct of which the petitioner has been accused: burning a cross on the lawn of a person of color.

Petitioner contends that the ordinance is overbroad. However, overbreadth is not fatal when the statute has been narrowed to include only conduct that is clearly outside the scope of constitutional protection. In this case, the Minnesota Supreme Court has narrowed the statute to reach only conduct falling into categories outside first amendment protection: (1) "fighting words" and (2) incitement.

Cross burning is an especially invidious act. A burning cross is an insult and a threat; it carries with it the historical baggage of past terrorism and physical attacks. When a cross burning is targeted against an individual and his family, it is more than just expression; it is a form of violence itself -- symbolic violence.

Because context determines whether symbolic conduct rises to the level of fighting words or incitement, many instances of symbolic conduct fall outside the scope of the ordinance. When examined in context, cross burning can be distinguished from protected conduct such as flag burning. This Court has recognized that flag burning is protected by the first amendment because of the context in which occurs -- people dissenting from conventional political thought. Cross burning directed against a specific person, on the other hand, conveys an unambiguous message of hatred and intimidation.

As interpreted by the state supreme court, the St. Paul ordinance has been narrowed to proscribe conduct that is unprotected by the first amendment. The ordinance punishes conduct that amounts to symbolic violence which in turn threatens further violence. The St. Paul disorderly conduct ordinance is constitutional, and the decision of the Supreme Court of Minnesota should be affirmed.

ARGUMENT

I. PREVENTING RACIALLY MOTIVATED VIOLENCE, HARASSMENT, AND INTIMIDATION IS A COMPELLING GOVERNMENTAL INTEREST

The United States has a long history of prejudice and discrimination against people of color. And for much of this history, prejudice and discrimination have produced violence. No one can represent in good faith to this Court that racially motivated violence, harassment, and intimidation do not have profoundly traumatic effects on the intended victims and on the community at large. Thus, there is a compelling governmental interest in addressing the growing problem of racially motivated violence.

A. Racially Motivated Violence Against Asians, Pacific Islanders, and Other People of Color is a Serious and Pervasive Problem

The history of minority groups in this country is replete with overt racism and hostility that have been fanned into individual and mob violence. *See* U.S. Comm'n on Civil Rights, *Intimidation and Violence: Racial and Religious Bigotry in America* (Clearinghouse Pub. No. 96, 1990) [hereinafter *Intimidation and Violence*]. Symbols such as a burning cross have a long association with racial and religious violence, either as assaults in themselves, or as tools to inflame racial and religious bigotry and to incite violence. *See id.* at 13. The symbolism in our nation's history goes far beyond an invitation to debate offensive notions and results in more than wounded emotions or "hurt feelings."

Cross burnings, while best known as an assault tactic by the Ku Klux Klan against African Americans, have also been used against other "unpopular" groups such as Asians and Pacific Islanders. As recently as June 4, 1991, a Filipino American family in Albuquerque, New Mexico, was terror-

ized by a cross burning in their yard.[1] *See* Albuquerque J., June 6, 1991, § D, at 1.

As in the past, population growth and overt discrimination[2] against Asians and Pacific Islanders have resulted in the proliferation of anti-Asian violence.[3] *See* U.S. Comm'n on Civil Rights, *Recent Activities Against Citizens and Residents of Asian Descent* (Clearinghouse Pub. No. 88, 1986) [hereinafter *Recent Activities*]. According to the 1990 census, there are close to 7.3 million Asians and Pacific Islanders in the United States, representing an increase of 107.8% from the 1980 census, and making this community one of the fastest growing groups in the United States. U.S. Dep't of Commerce, Bureau of the Census, *United States*

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[1]Recent cross burnings targeted against Asians include incidents at the home of several Hmong refugees in California, against a Chinese family in California, and against a Japanese school in Tennessee. *See* Southern Poverty Law Center, *Asians in America: Old Stereotypes, Renewed Violence Confront the Country's Fastest Growing Ethnic Population*, Klanwatch Intelligence Rep. No. 50, at 5 (June 1990).

[2]Past governmental discrimination against Asians and Pacific Islanders has ranged from anti-Asian court decisions, *see, e.g., People v. Hall*, 4 Cal. 399 (1854) (Chinese and other non-white people prohibited against testifying against whites); *Ozawa v. United States*, 260 U.S. 178 (1922) (Japanese forbidden from obtaining American citizenship), to exclusionary immigration laws, *see, e.g.*, Chinese Exclusion Act, Ch. 126, 22 Stat. 58 (1882); Tydings-McDuffie Act, Ch. 84, 48 Stat. 456 (1934) (limiting Filipino immigration to quota of fifty per year), to the forced incarceration of Japanese Americans during World War II, *see* Executive Order 9066, 3 C.F.R. 1092 (1938-43); *see also Korematsu v. United States*, 323 U.S. 214 (1944).

[3]The increase in anti-Asian sentiment can also be attributed to increasing economic hardship faced by many communities, coupled with severe cutbacks in government social service programs, the fear of economic competition from Pacific Rim countries, and the United States' past participation in wars on Asian soil. *See Recent Activities*, *supra*, at 29-39.

(National) 1990 Census Counts [General Population], at 1, Table 1 (1991).

Anti-Asian violence has grown concomitantly with the increase in the population. In Los Angeles County, for example, there was a sixty-five percent increase in the total number of racially motivated hate crimes from 1989 to 1990. L.A. County Comm'n on Human Relations, *Hate Crime in Los Angeles County, 1990*, at 1-2 (1991). Out of a total of 275 racially motivated hate crimes, forty-nine, or 17.8 percent, were directed at Asians and Pacific Islanders. *Id.*

Similarly, the number of hate crimes has increased in other major metropolitan areas where Asians and Pacific Islanders are concentrated. Between January and August of 1990 in New York City, reported incidents against Asian Pacific Americans showed the highest increase among all the ethnic groups. *See* Asian Week, Apr. 5, 1991, at 1. In Boston, Massachusetts, there was a sixty percent increase in reported anti-Asian violence in from 1982 to 1987. *Id.* Moreover, reported numbers no doubt undercount the number of incidents, given the fact that a large portion of the Asian and Pacific Islander population are immigrants and may be reluctant to report the incidents because of fear, language difficulties, and ignorance of their legal rights.

Violence against Asians and Pacific Islanders has covered the gamut of cross burnings, racial slurs, graffiti, beatings, shootings, and killings.[4] For example, in 1982, Vincent Chin, a Chinese American, was beaten to death by two white unemployed auto workers in Detroit, Michigan who blamed Chin for the influx of Japanese automobiles and the loss of their jobs. *See Recent Activities*, *supra* p. 7, at 43-44.

In 1989, gunman Patrick Purdy, who hated Vietnamese people as a result of the Vietnam War, killed five and

[4]*See* Appendix A.

wounded more than twenty Southeast Asian children with his assault rifle in Stockton, California. Also in 1989, in Raleigh, North Carolina, Ming Hai "Jim" Loo, a Chinese American, was beaten to death outside of a pool hall by white men who blamed him for the death of Americans in Vietnam. *See* Southern Poverty Law Center, *Asians in America: Old Stereotypes, Renewed Violence Confront the Country's Fastest Growing Ethnic Population*, Klanwatch Intelligence Rep. No. 50, at 4 (June 1990).

In 1990, a fifteen-year-old Vietnamese teenager, Hung Truong, was beaten to death by two white high school boys who associated with an organized hate group known as "skinheads" in Houston, Texas. While being beaten and kicked, the boy apparently pleaded for his life and said, "God forgive me for coming to this country. I'm so sorry." *See* Houston Chronicle, Jan. 19, 1991, § A, at 29.

Even if there are no immediate physical injuries, acts of racial intimidation, such as cross burnings, serve to terrorize Asians and Pacific Islanders and interfere with their basic, fundamental right to live without being subject to violence or fear of violence solely because of their race.

In the recent past, intimidation tactics also have been directed at organizations with primarily Asian membership. For example, in Phoenix, Arizona, a church attended mainly by Chinese Americans was found defaced with racial epithets and bullet holes on September 12, 1990. The racist graffiti said, "No Chinks. Go Home to China," and was accompanied by "KKK," the signature of the Ku Klux Klan. *See* Phoenix Gazette, Sept. 14, 1990, § B, at 1. A similar incident was also reported in Glendale, Arizona, in October of 1990: a swastika and the words "White Supreme" were painted on the walls of the Japanese American Citizens' League (JACL) headquarters. A short time later, after being interviewed on television regarding reparations for Japanese Americans interned during World War II, the president of the

JACL received death threats at his home and office. *See* Arizona Republic, Nov. 5, 1990, at B1.

Racially motivated incidents are not limited to specific socio-economic classes or to individuals with a particular level of education. Racial incidents have been on the increase on college campuses throughout the country. Incidents of racially motivated harassment and attacks have been reported at universities such as Harvard, Yale, Brown, the University of Texas, Penn State, Georgetown, the University of Michigan, and many others. *See Race on Campus: Failing the Test?*, Newsweek, May 6, 1991, at 26. In one instance, on May 27, 1991, a Chinese foreign student was attacked by seven white high school students on the Cornell University campus for no other apparent reason than the fact that the student was Asian. *See Anti-Asian Violence at Cornell University*, World J., June 15, 1991, at 3.

Violence against Asians and other people of color is on the rise, increasing in both frequency and intensity. As a civilized society, we must ensure that no one is subjected to hate-based violence and that government plays an active role in preventing such violence.

B. Racially Motivated Crimes Have Been Properly Addressed Through Statutes Prohibiting Such Conduct

As a response to the growing and widespread problem of racial violence, state and local governments across the country have enacted statutes that monitor hate crimes and prohibit specific acts of violence, intimidation, and harassment.[5] The United States Congress has already recognized the gravity of the problem and recently passed the Hate Crimes Statistics Act, Pub. L. No. 101-275, 104 Stat. 140

[5]For a detailed listing of different state hate crimes statutes, see Appendix B.

(1990) (codified at 28 U.S.C.A. 534 (West Supp. 1991)), to monitor and collect data on hate crimes at the national level.

Laws that specifically address the problem of racial violence serve the important function of communicating to individuals who would commit acts of violence that the people in the local community or state do not sanction such acts. These laws also encourage the police to act with particular dispatch in handling racially motivated crimes. As the United States Commission on Civil Rights has noted: "Effective police responses to incidents of racial and religious violence are necessary to keep such incidents from spreading. If the police fail to respond, or respond in ways that clearly demonstrate a lack of sensitivity, perpetrators can interpret the police activity as official sympathy or even sanction." *Intimidation and Violence*, *supra* p. 6, at 17-18.

In 1987, the Minnesota Governor's Task Force on Prejudice and Violence held hearings throughout Minnesota in response to the increasing incidents of racially motivated crimes. The Minnesota Advisory Committee to the United States Commission on Civil Rights held hearings in St. Paul and also recommended a legislative response. *See* Minn. Advisory Comm. to U.S. Comm'n on Civil Rights, *Bigotry and Violence in Minnesota* (1989). During the 1988 legislative session, a series of bias crimes statutes were passed. Many other state legislatures have come to the same conclusion and have passed similar measures.

One of the most common legislative schemes adopted by the various states are those that prohibit the desecration of religious objects or property, cross burning, and intimidation or harassment. For example, under the category of burning or desecration of religious symbols, the State of California prohibits the burning or desecration of religious symbols, including crosses and Nazi swastikas, on a person's property in order to terrorize another person. Cal. Penal Code § 11411 (West Supp. 1991). Other states also include vandalism

against a place of worship or defacement of churches, synagogues, or cemeteries. *See* Appendix B. Other statutory proscriptions include desecration of a place of worship, the wearing of masks or hoods, and the banning of secret societies. *See id.* Many states have enacted statutes criminalizing racial intimidation or harassment. *See id.* Acts such as those alleged to have been committed by petitioner have clearly been recognized by society as being well beyond the protection of free speech.

Unless legislatures take affirmative steps to curb racial violence and send a message that society does not condone racial harassment, intimidation, or violence, minority groups such as Asians and Pacific Islanders will not be able to fully enjoy the civil rights guaranteed by the constitution and the laws of this nation. Thus, preventing and punishing racially motivated violence, harassment and intimidation is a compelling state interest that must be addressed through legislative action.

II. THE ST. PAUL HATE CRIMES ORDINANCE, AS CONSTRUED BY THE MINNESOTA SUPREME COURT, IS CONSTITUTIONAL

In its own attempt to address the pervasive problem of hate-based violence and intimidation, the City of St. Paul enacted section 292.02, which regulates disorderly conduct against people of color, religious minorities, and women. The ordinance states:

> Whoever places on public or private property a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender commits disorderly conduct and shall be guilty of a misdemeanor.

St. Paul, Minn., Legis. Code § 292.02 (1990). As part of a legislative scheme that addresses hate crimes,[6] section 292.02 proscribes behavior targeted against individuals belonging to groups who have suffered -- and continue to suffer -- the most extensive discrimination and have possessed the least power to combat that discrimination.

Petitioner in this case has been accused of a hate crime. In the trial court below, petitioner was charged with disorderly conduct under section 292.02 for burning a cross in an African American family's front lawn during the middle of the night.[7] In addition, petitioner, along with five others, is alleged to have burned a second cross across the street from the family's home and a third cross in the parking lot of an apartment complex with several African American residents. Before the cross burnings, petitioner and his companions are alleged to have engaged in discussions about causing "skinhead trouble" and "burning some niggers."

Without question, petitioner's alleged conduct was meant to harass and intimidate the African American family, not to advocate any political or social views. The conduct in question clearly falls outside the protection of the first amendment. Nevertheless, petitioner contends that he cannot be prosecuted under section 292.02 because it is both overbroad and vague, criminalizing protected expression and providing

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[6] *See* St. Paul, Minn., Legis. Code § 292.01 (1990) (bias-motivated assault); *id.* § 292.03 (bias-motivated vandalism).

[7] The petitioner was also charged with bias-motivated assault in the fourth degree under a Minnesota state statute. *See* Minn. Stat. Ann. § 609.2231, subd. 4(a) (West Supp. 1991) ("Whoever assaults another because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability . . . , age, or national origin may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than $3,000, or both.").

insufficient guidance to individuals seeking to determine permissible conduct.

Petitioner's arguments lack merit. Because the ordinance, as authoritatively interpreted by the Minnesota Supreme Court, specifies punishable conduct that is unprotected by the first amendment, the ordinance is constitutional.

A. The Minnesota Supreme Court Properly Narrowed the Scope of the St. Paul Ordinance to Include Only Unprotected Expression

The St. Paul ordinance penalizes bias-motivated conduct that one knows or has reasonable grounds to know causes "anger, alarm or resentment in others." Because section 292.02, as written, appears to apply to an array of expressive conduct, petitioner's overbreadth challenge rests on the assumption that the ordinance sweeps both unprotected and protected conduct into its coverage. However, as narrowed by the Minnesota Supreme Court in its opinion below, the ordinance applies only to conduct that, taken in context, is unprotected by the first amendment. In re *Welfare of R.A.V.*, 464 N.W.2d 507 (Minn. 1991).

The overbreadth doctrine is based on "[t]he premise that a law should not be invalidated . . . unless it reaches a substantial number of impermissible applications." *New York v. Ferber*, 458 U.S. 747, 771 (1982). The overbreadth requirement is especially exacting when applied to conduct rather than to "pure speech": "where conduct and not merely speech is involved, . . . the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973).

Further, this Court has long held that a statute may be saved from an overbreadth challenge by a court's narrowing construction of that statute. *See, e.g., Osborne v. Ohio,* 110 S. Ct. 1691 (1990); *Board of Airport Comm'rs v. Jews for*

Jesus, Inc., 482 U.S. 569 (1987); *Lewis v. City of New Orleans*, 415 U.S. 130 (1974); *Gooding v. Wilson*, 405 U.S. 518 (1972). "Courts routinely construe statutes so as to avoid the statutes' potentially overbroad reach, apply the statute in that case, and leave the statute in place." *Osborne v. Ohio*, 110 S. Ct. 1691, 1701 (1990). And, this Court often has requested a state court to reinterpret a state statute more narrowly in order to uphold the statute's constitutionality. *See, e.g., Rosen v. California*, 416 U.S. 924 (1974); *Karlan v. City of Cincinnati*, 416 U.S. 924 (1974); *Kelly v. Ohio*, 416 U.S. 923 (1974); *Lucas v. Arkansas*, 416 U.S. 919 (1974).

In this case, the Minnesota Supreme Court has provided a narrowing construction of section 292.02:

> [T]he challenged St. Paul ordinance does not on its face assume that any cross burning, irrespective of the particular *context* in which it occurs, is subject to prosecution. Rather, the ordinance censors only those displays that one knows or should know will create anger, alarm or resentment based on racial, ethnic, gender, or religious bias.

In re *Welfare of R.A.V.*, 464 N.W.2d 507, 510 (Minn. 1991) (emphasis added). The supreme court restricted the ordinance "to reach only those expressions of hatred and resorts to bias-motivated personal abuse that the first amendment does not protect." *Id.* at 511. Specifically, the court limited prohibited conduct under the ordinance to two settings: (1) "fighting words" -- conduct that itself inflicts injury or tends to incite immediate violence, and (2) incitement -- conduct in which the anger, alarm, or resentment elevates to the level of "imminent lawless action." *Id.* at 510 (citing *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942) (fighting words); *Brandenburg v. Ohio*, 395 U.S. 444, 449 (1969) (incitement)). Thus in exercising its prerogative to give meaning to Minnesota law, the Minnesota Supreme Court provided

express guidance on the scope of section 292.02:[8] *Only conduct that is itself injurious and violent, or conduct that can lead to violence is prohibited by the ordinance.*

Because this case involves a state law on direct review of a state court decision that has construed the law, the state court's construction is binding on this Court and should only be disturbed to the extent that the construed statute is unconstitutional. *See New York v. Ferber*, 458 U.S. 747, 767, 769 n.24 (1982); *Wainwright v. Stone*, 414 U.S. 21, 22-23 (1973); *Gooding v. Wilson*; 405 U.S. 518, 520 (1972). The Minnesota Supreme Court has provided a clear construction of section 292.02 that limits the ordinance to well-defined categories of unprotected expression. This Court, as the ultimate arbiter of the law's constitutionality, must therefore decide the validity of section 292.02 by taking it as a law interpreted to proscribe symbolic expression that is violent or causes violence.

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[8]The court's narrowing construction of section 292.02 is bolstered by its earlier opinion in In re *Welfare of S.L.J.*, 263 N.W.2d 412 (Minn. 1978). In that case, the court held that the Minnesota disorderly conduct statute, which prohibits engaging in language or conduct tending to "arouse alarm, anger, or resentment in others," is constitutional when limited to "fighting words." *Id.* at 418-19 (quoting Minn. Stat. § 609.72, subd. 1(3)).

The defendant, a 14-year-old child, was convicted of disorderly conduct for shouting "fuck you pigs" at two police officers sitting in their squad car about 15 to 30 feet away. The supreme court reversed, finding that within the given factual context, the defendant's statement was unlikely to incite an immediate breach of the peace or to provoke violent reaction by an ordinary, reasonable person. *Id.* at 419-20.

Subsequent Minnesota decisions have reaffirmed the application of fighting words to disorderly conduct ordinances. *See City of Little Falls v. Witucki*, 295 N.W.2d 243 (Minn. 1980); *City of Minneapolis v. Lynch*, 392 N.W.2d 700 (Minn. Ct. App. 1986).

B. The St. Paul Ordinance Applies to Unprotected Expression -- Conduct That is Violent or Causes Violence

Freedom of expression is not absolute. This Court has long recognized exceptions to the first amendment's protection of free speech: for example, "fighting words," *see Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942), obscenity, *see Roth v. United States*, 354 U.S. 476 (1957), libel, *see Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), child pornography, *see New York v. Ferber*, 458 U.S. 747 (1982), and incitement of violence, *see Brandenburg v. Ohio*, 395 U.S. 444 (1969), are all outside the shield of the first amendment.

The conduct prohibited by the St. Paul ordinance clearly falls within categories of unprotected speech recognized by this Court.[9] In its narrowing construction of section 292.02,

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[9]The Minnesota Supreme Court chose to limit its construction of the St. Paul ordinance to include only fighting words or conduct that incites or produces imminent lawless action, categories of expression that have been outside the scope of the first amendment for several years. Recently, a number of commentators have argued for the explicit recognition of racist speech as a category of expression beyond first amendment protection. *See, e.g.*, Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 Mich. L. Rev. 2320 (1989) (suggesting regulation of racist speech in which message is (1) of racial inferiority, (2) directed against a historically oppressed group, and (3) persecutorial, hateful, and degrading); Lawrence, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, 1990 Duke L.J. 431 (suggesting regulation of hate speech on university campuses).

The Court need not set aside racist speech (or any other type of hate speech) as a separate unprotected category in order to decide this case. Existing categories of unprotected expression provide sufficient grounds for upholding the constitutionality of the St. Paul disorderly conduct ordinance.

Nevertheless, the basic arguments for criminalizing racist speech rely on similar arguments for applying the current categories of unprotected expression to cross burning and other forms of hate-based symbolic

the Minnesota Supreme Court established two contextual bases for establishing violations of the ordinance: fighting words or incitement of imminent lawless action. In *Chaplinsky v. New Hampshire*, this Court stated that "fighting words," namely "those which by their very utterance inflict injury or tend to incite an immediate breach of the peace," fall outside first amendment protection. 315 U.S. 568, 572 (1942). In *Brandenburg v. Ohio*, this Court held that the government may not prohibit the advocacy of violence "except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." 395 U.S. 444, 447 (1969). By relying on these parallel doctrines,[10] the Minnesota Supreme Court limited the breadth of section 292.02 to only those forms of symbolic expression that lead to violence.

Burning a cross on an African American family's lawn is precisely the type of symbolic conduct that extends beyond the sphere of constitutionally protected expression. A burning cross is a personal insult, directed at a particular individual and imbued with racial enmity. *Cf. Cantwell v. Connecticut*, 310 U.S. 296, 309 (1940) ("Resort to epithets or personal

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conduct: racist speech can cause tangible injury to the target of the speech and racist speech can cause physical violence to occur. Implicit in the argument to outlaw racist speech is the presupposition that hate speech is not only a cause of violence but a form of violence. *See generally Language as Violence v. Freedom of Expression: Canadian and American Perspectives on Group Defamation*, 37 Buffalo L. Rev. 337 (1989).

[10]Although considered separate categories, fighting words and incitement are really two sides of the same coin. *Cf.* L. Tribe, *American Constitutional Law* § 12-18, at 929 n.9 (2d ed. 1988). Fighting words cause a violent reaction in the target of the expression; incitement causes a violent reaction in others against the target of the expression. In either case, the ultimate result is not a further exchange of ideas in the marketplace of ideas. The ultimate result is more violence.

abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution . . . ."). A burning cross is a threat, a threat that carries with it the historical baggage of past terrorism and physical attacks. *Cf. Watts v. United States*, 394 U.S. 705, 707 (1969) (true threats are not constitutionally protected speech); *United States v. Lee*, 935 F.2d 952, 955-56 (8th Cir. 1991) ("Intimidation by threats of physical violence is not protected by the first amendment."). The natural response to such a threat is not debate or more speech; the natural response is violence. Cross burning epitomizes fighting words.[11]

Burning crosses and swastikas have special meanings for those who been the traditional victims of violence in American society. *See* Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 Mich. L. Rev. 2320, 2365-66 (1989). These symbols carry messages replete with animosity that is rooted in the past and extends into the present; they trigger collective memories that are both painful and frightening.[12] When targeted against an individual or a specific group of individuals, a burning cross or a spray-

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[11]One commentator has suggested that four elements must be present before the fighting words doctrine makes expression constitutionally unprotected: "The offending language (1) must constitute a personally abusive epithet, (2) must be addressed in a face-to-face manner, (3) must be directed to a specific individual and be descriptive of that individual, and (4) must be uttered under such circumstances that the words would have a direct tendency to cause an immediate violent response by the average recipient." Gard, *Fighting Words and Free Speech*, 58 Wash. U.L.Q. 531, 563 (1980). Petitioner's alleged cross burning would easily satisfy all the criteria listed above.

[12]The injuries inflicted on victims of symbolic violence are real and concrete, causing psychological and emotional harm. *See* Matsuda, *supra*, at 2335-40; Delgado, *Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 Harv. C.R.-C.L. L. Rev. 133, 135-49 (1982).

painted swastika is not simply a statement. It is a form of violence itself -- symbolic violence.

Hate-based symbols engender violence as well. The link between the violence of symbols and the violence of physical acts is clear: symbolic violence can easily elevate to physical violence. In our nation's history, cross burning has rarely been an empty threat. It has gone hand-in-hand with overt violence: beatings, lynchings, the destruction of home and property. Hate groups such as the Ku Klux Klan have incited the most extreme forms of violence through cross burnings and other symbolic acts.[13] *See generally* Southern Poverty Law Center, *The Ku Klux Klan: A History of Racism and Violence* (3d ed. 1988). As a prelude to violence against people of color, one can find no better symbol than the burning cross.

Context, of course, is critical in determining whether a particular type of symbolic conduct rises to the level of fighting words or incitement. Within a given factual setting, a hateful symbol -- a burning cross, a Nazi swastika, a confederate flag -- may be used to harass or intimidate an individual, or it may simply be used to advocate a political position. *See State v. Miller*, 629 P.2d 748, 751 (Kan. Ct. App.

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[13]As the United States Commission on Civil Rights has noted, not only have hate groups themselves used symbols as precursors to violence, they have inspired others to use the same hateful symbols:

> Some reported acts of racial and religious intimidation are committed by persons who are said to have, or profess to have, past or present connections with organizations that preach hatred and advocate violence to vent that hatred. Even the perpetrators with no known or professed connection with such groups are clearly imitators of them and adopt their symbols of terror -- the swastika, the burning cross, and the graffiti of hate and intimidation. . . . As far as the victims are concerned, it matters little whether a group or an individual is responsible for the act; the terrorizing effects are the same.

Intimidation and Violence, *supra* p. 6, at 13.

1981) ("[T]he surrounding facts and relationship of the parties involved may be such that . . . the burning of a cross on the property of another is the communication of a terroristic threat.").

Many forms of symbolic expression, despite their offensiveness, could fall outside the scope of the St. Paul ordinance. Waving a Nazi flag in a parade or wearing a white hood and robe, while highly provocative and offensive to many, conveys a message of white supremacy and religious intolerance. *But cf. State v. Miller*, 260 Ga. 669, 398 S.E.2d 547 (1990) (upholding constitutionality of Georgia anti-mask statute). Unless the conduct was directed at particular individuals and could produce violence, it would fall outside the coverage of the ordinance and would remain constitutionally protected expression. *Cf. Collin v. Smith*, 578 F.2d 1197 (7th Cir.) (striking down ordinances preventing dissemination of racist materials and demonstrations by Nazis in Skokie, Illinois), *cert. denied*, 439 U.S. 916 (1978).

Cross burning, therefore, can be distinguished from protected conduct such as flag burning, when examined in context. In its recent flag burning decisions, *Texas v. Johnson*, 491 U.S. 397 (1989), and *United States v. Eichman*, 110 S. Ct. 2404 (1990), the Court held that burning the American flag is symbolic expression protected by the first amendment. Flag burning performed in a public forum as part of a political protest is conduct replete with protected expression -- dissension from conventional political thought, dissatisfaction with legislative processes, distrust of governmental institutions. Cross burning directed against a specific person or group, however, conveys an unambiguous message of hatred and intimidation. *See United States v. Lee*, 935 F.2d 952, 956 & n.5 (8th Cir. 1991); *United States v. Salyer*, 893 F.2d 113, 115-17 (6th Cir. 1989). Any political expression implicit in a cross burning, such as the supremacy of whites over

people of color, is miniscule when compared to the obvious threat of violence against the targeted individuals.

As interpreted by the Minnesota Supreme Court, the St. Paul ordinance extends its coverage only to the most extreme expressive conduct, conduct that amounts to symbolic violence that threatens further violence. By emphasizing the *context* in which the expression occurs, the court's construction of section 292.02 limits the ordinance's coverage to symbolic conduct that is more than just offensive to the average observer. The ordinance is neither overbroad nor vague, since, as narrowed by the supreme court, it defines conduct "with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

Upholding section 292.02 is thus consistent with the fundamental principle expounded in *Texas v. Johnson*: "If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." 491 U.S. 397, 414 (1989). Petitioner's alleged conduct -- burning a cross on the lawn of an African American family during the middle of the night -- goes beyond the realm of offensiveness and enters the world of threats and violence; it is exactly the type of conduct that should fall outside the first amendment's protection.

CONCLUSION

For the foregoing reasons, the St. Paul, Minnesota ordinance is constitutional, and the decision of the Supreme Court of Minnesota should be affirmed.

Respectfully submitted,

ANGELO N. ANCHETA
Counsel of Record
KATHRYN K. IMAHARA
ASIAN PACIFIC AMERICAN LEGAL
CENTER OF SOUTHERN CALIFORNIA
1010 South Flower Street, Suite 302
Los Angeles, California 90015
(213) 748-2022

DENNIS HAYASHI
DOREENA WONG
ASIAN LAW CAUCUS, INC.
468 Bush Street, 3rd Floor
San Francisco, California 94108

STANLEY MARK
ASIAN AMERICAN LEGAL
DEFENSE AND EDUCATION FUND
99 Hudson Street, 12th Floor
New York, New York 10013

KAREN K. NARASAKI
NATIONAL ASIAN PACIFIC
AMERICAN BAR ASSOCIATION
PERKINS COIE
1201 Third Avenue, 40th Floor
Seattle, Washington 98101

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APPENDIX A

RECENT EXAMPLES OF HATE CRIMES AGAINST ASIANS AND PACIFIC ISLANDERS*

June 1982	Vincent Chin, a Chinese American, is beaten to death by two unemployed auto workers in Detroit who blamed him for the downfall of the American automobile industry.
Dec. 1982	Crosses are burned on the lawn of a Filipino family in San Leandro, California.
Sept. 1987	A Cambodian American teenager is drowned near Lowell, Massachusetts by a youth shouting racial slurs.
Jan. 1989	Five Southeast Asian children are gunned down by Patrick Purdy in Stockton, California. Twenty children are wounded.
July 1989	Ming Hai "Jim" Loo, a Chinese American, is beaten to death by men blaming him for American casualties in Vietnam.
Nov. 1989	Three Asian American shop owners, two Chinese American and one Korean American, are beaten and racially taunted by a band of white teens in Castro Valley, California.
Apr. 1990	Two Japanese students are attacked and beaten in La Crosse, Wisconsin by white students.
May 1990	A Hmong youth, riding with two white women co-workers, is beaten and racially taunted by white assailants in Yuba County, California.
Aug. 1990	A Vietnamese teenager is beaten and kicked to death by two "skinheads" in Houston, Texas.
Sept. 1990	The Greater Phoenix Chinese Christian Church in Phoenix is defaced with racial grafitti and bullet

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*This list is by no means exhaustive; rather, it is illustrative of the many instances of violent bias-motivated acts perpetrated against Asians and Pacific Islanders. The list is compiled from various sources, including newspaper and broadcast media reports and personal accounts presented to *amici curiae*. A complete list of sources is available from counsel for *amici*.

holes.

Sept. 1990 — Two Japanese men driving in their car in San Francisco is struck by the car of a white male. When questioned about why he swerved into the victims' car, the perpetrator says it was because they were "gooks."

Oct. 1990 — Four white men linked with the Ku Klux Klan seriously beat six Japanese students in Denver, Colorado.

Oct. 1990 — The Japanese American Citizen's League's headquarters in Glendale, Arizona is defaced with a painted swastika and the words "White Supreme."

Jan. 1991 — As several Koreans are playing golf in Milpitas, California, one of them is choked by a white man, who remarks "we're big Americans . . . we don't need you . . . Oriental boys here."

Jan. 1991 — In Seattle, Washington, a seventeen-year-old Korean youth is attacked by three white men yelling racial epithets.

Jan. 1991 — "KKK" is spray painted on the home of a Samoan man in Oldsmar, Florida.

May 1991 — A Chinese foreign student is attacked by seven white high school students on the Cornell University campus because he is Asian.

June 1991 — Kimochi, Inc., a Japanese American senior citizens organization in San Francisco, California, receives threatening letters saying "Death to all Former Internees."

June 1991 — Two Japanese American women are assaulted at a restaurant in Huntington Beach, California by seven men and women who taunt, shove, punch, and pour drinks on them. The women were speaking in Japanese and the attackers insisted that they speak English.

June 1991 — A cross is burned in the yard of a Filipino American family in Albuquerque, New Mexico.

Aug. 1991 — A Chinese American high school graduate is beaten unconscious by members of a white-supremacist skinhead group in Fullerton, California.

APPENDIX B

State Hate Crimes Statutes

Cross Burning

Ariz. Rev. Stat. Ann. § 13-1504 (1989)
Cal. Penal Code § 11411 (West Supp. 1991)
Conn. Gen. Stat. Ann. § 46a-58(c) (West 1986)
Fla. Stat. Ann. § 876.17 (West 1976)
Ga. Code Ann. § 16-11-37 (Harrison 1990)
Md. Ann. Code art. 27, § 10A (1987)
N.C. Gen. Stat. § 14-12.12 (1986)
R.I. Gen. Laws § 11-53-2 (1990)
S.C. Code Ann. § 16-7-120 (Law. Co-op. 1985)
Vt. Stat. Ann. tit. 13, § 1456 (Supp. 1990)
Va. Code Ann. § 18.2-423 (1988)
Wash. Rev. Code Ann. § 9A.36.080 (Supp. 1991)

Data Collection

Cal. Penal Code § 13023 (West Supp. 1991)
Conn. Gen. Stat. Ann. § 29-7m (West 1990)
Fla. Stat. Ann. § 877.19 (West Supp. 1991)
Idaho Code § 67-2905 (1989)
Ill. Rev. Stat. ch. 127, para. 55a(31) (Supp. 1991)
Iowa Code Ann. § 80.40 (West Supp. 1991)
Me. Rev. Stat. Ann. tit. 5, § 4660 (1989)
Mass. Gen. Laws Ann. ch. 22, §§ 16 to 19 (West Supp. 1991)
Md. Ann. Code art. 88B, § 9 (1985 & Supp. 1990)
Minn. Stat. Ann. § 626.5531 (West. Supp. 1991)
Or. Rev. Stat. § 181.550 (1991)
R.I. Gen. Laws § 42-28-46 (1988)

Desecration/Defacement of Religious Objects or Property

Ala. Code § 13A-11-12 (1982)
Ariz. Rev. Stat. Ann. § 13-1604 (1989)
Ark. Stat. Ann. § 5-71-215 (1987)
Cal. Penal Code § 11411 (West Supp. 1991)
Conn. Gen. Stat. Ann. § 46A-58 (West 1986)
Colo. Rev. Stat. § § 18-9-113 (1986 & Supp. 1990)
Del. Code Ann. tit. 11, § 1331 (1987 & Supp. 1990)
Haw. Rev. Stat. § 711-1107 (1985)

Idaho Code § 18-6201 (1987)
Ill. Rev. Stat. ch 38, § 21-1.2 (Supp. 1991)
Ind. Code Ann. § 35-43-1-2 (West Supp. 1990)
Kan. Stat. Ann. § 21-4111 (1988)
Ky. Rev. Stat. Ann. § 525.110 (Michie/Bobbs-Merrill 1990)
Me. Rev. Stat. Ann. tit. 17-A § 507 (1983 & Supp. 1990)
Md. Ann. Code art. 27, § 470A (Supp. 1990)
Mass. Gen. Laws Ann. ch. 266, § 98 (West 1990)
Miss. Code Ann. § 97-17-39 (Supp. 1991)
Mo. Rev. Stat. § 574.085 (Supp. 1991)
N.J. Stat. Ann. § 2C:33-9 (West 1982)
Or. Rev. Stat. § 166.075 (1990)
18 Pa. Cons. Stat. Ann. § 5509 (Purdon 1985)
Tenn. Code Ann. § 39-17-311 (Supp. 1990)
Tex. Penal Code Ann. § 42.09 (Vernon 1989)
Va. Code Ann. § 18.2-127 (Supp. 1991)

Desecration of a Place of Worship
Ariz. Rev. Stat. Ann. § 13-1604 (1989)
Ga. Code Ann. § 16-7-26 (Harrison 1990)
Mass. Gen. Laws Ann. ch. 266, §§ 2, 127A (West 1990)
N.J. Stat. Ann. § 2C:33-9 (West 1982)
N.M. Stat. Ann. § 30-13-1 (1984)
Okla. Stat. Ann. tit. 21, § 1765 (West 1983)
Va. Code. Ann. §§ 18.2-127, 18.2-138 (Supp. 1991)

General Civil Rights Statute - Criminal
Idaho Code §§ 18-7301 to -7303 (1987)
Mass. Gen. Laws Ann. ch. 265, § 37 (West 1990)
Mont. Code Ann. § 45-5-221 (1989)
N.D. Cent. Code § 12.1-14-05 (1985)
18 Pa. Cons. Stat. Ann. § 2710 (Purdon 1983)
R.I. Gen. Laws § 9-1-35 (1985)
S.C. Code Ann. § 16-5-10 (Law. Co-op. 1985)
Vt. Stat. Ann. tit. 13, § 1457 (Supp. 1990)
Wis. Stat. Ann. § 895.75 (West Supp. 1990)

General Civil Rights Statute - Civil
Neb. Rev. Stat. § 20-148 (1987)

N.Y. Civ. Rights Law §§ 40-c, 40-d (McKinney 1991)
Or. Rev. Stat. § 30.190 (1988)

General Intimidation/Harassment - Criminal
Ala. Code § 13A-11-12 (Supp. 1982)
Ariz. Rev. Stat. Ann. § 13-1504 (1989)
Ark. Stat. Ann. § 5-71-207 (1987)
Cal. Penal Code §§ 422.6, 11410 (West Supp. 1991)
Colo. Rev. Stat. § 18-9-121 (Supp. 1990)
Conn. Gen. Stat. Ann. § 53-37 (West 1985)
Ga. Code Ann. § 16-11-39 (Harrison 1990)
Idaho Code §§ 18-7901 to -7904 (1987)
Ill. Rev. Stat. ch. 38, § 12-7.1 (West Supp. 1991)
Iowa Code Ann. § 729.5 (West Supp. 1991)
Me. Rev. Stat. Ann. tit. 17 §§ 2931-2932 (1983 & Supp. 1990)
Mass. Gen. Laws Ann. ch. 265, § 39 (West 1990)
Minn. Stat. Ann. § 609.2231 (West Supp. 1991)
Nev. Rev. Stat. § 207-185 (1989)
N.J. Stat. Ann. §§ 2C:12-1, 2C:33-4, 2C:43-7, 2C:44-3 (1991)
N.Y. Penal Law § 240.31 (McKinney Supp. 1989)
N.C. Gen. Stat. § 14-12.13 (1986)
N.D. Cent. Code § 12.1-14-04 (1985)
Ohio Rev. Code. Ann. § 2927.12 (Anderson 1987)
Or. Rev. Stat. §§ 166.155, 166.165 (1990)
18 Pa. Cons. Stat. Ann. § 2710 (Purdon 1983)
R.I. Gen. Laws § 11-42-3 (Supp. 1990)
S.D. Codified Laws Ann. § 22-27-1 (1988)
Tenn. Code Ann. § 39-17-309 (Supp. 1990)
Wash. Rev. Code Ann. § 9A.36.080 (Supp. 1991)
Wis. Stat. Ann. § 943.012 (West Supp. 1990)

General Intimidation/Harrasment - Civil
Ariz. Rev. Stat. Ann. § 13-1604 (1989)
Cal. Civ. Code §§ 51.7, 52.1 (West Supp. 1991)
Me. Rev. Stat. Ann. tit. 5, §§ 4681-4683 (Supp. 1990)
Mass. Gen. Laws Ann. ch. 12, §§ 11H to 11J (West 1990)
Mo. Rev. Stat. § 537.523 (Supp. 1991)

N.C. Gen. Stat. § 99D-1 (1987)
Ohio Rev. Code Ann. § 2921.45 (Anderson 1987)
Wis. Stat. Ann. § 939.645 (West Supp. 1990)

Harassment through Publications/Group Libel
Fla. Stat. Ann. § 836.11 (West 1976)
Mass. Gen. Laws Ann. ch. 272, § 98C (West 1990)

Disturbance of Religious Worship
Ark. Stat. Ann. § 5-71-207 (1987)
Cal. Penal Code §§ 302, 11412 (West Supp. 1991)
Fla. Stat. Ann. § 871.01 (1976)
Idaho Code § 18-6201 (1972)
Md. Ann. Code art. .27, § 470A (Supp. 1990)
Mass. Gen. Laws Ann. ch. 272, § 38 (West 1990)
Mich. Stat. Ann. § 28.366 (Callaghan 1990)
Minn. Stat. Ann. § 609.28 (West 1987)
Miss. Code Ann. § 97-35-17 (1973)
Nev. Rev. Stat. § 201.270 (1986)
N.M. Stat. Ann. § 30-13-1 (1984)
N.Y. Penal Law § 240.21 (McKinney 1989)
Okla. Stat. Ann. tit. 21, §§ 914, 915 (West 1983)
S.D. Codified Laws Ann. § 22-27-1 (1988)
Va. Code Ann. § 18.2-415 (Supp. 1991)
W. Va. Code § 61-6-13 (1989)

Paramilitary Training
Ark. Stat. Ann. § 5-71-302 (1985)
Cal. Penal Code § 11460 (West 1982)
Colo. Rev. Stat. § 18-9-120 (1986)
Conn. Gen. Stat. Ann. § 53-206B (West 1986)
Fla. Stat. Ann. § 790.29 (West Supp. 1991)
Idaho Code §§ 18-8101 to -8105 (1987)
Ill. Rev. Stat. ch. 129, § 220.94a (West Supp. 1991)
Mich. Stat. Ann. § 28.796(1) (Callaghan 1990)
Mo. Rev. Stat. § 574.070 (Supp. 1991)
Neb. Rev. Stat. § 28-1481 (1989)
N.C. Gen. Stat. § 14-288.20 (1986)
N.J. Stat. Ann. § 2C:39-14 (West 1991)

Or. Rev. Stat. § 166.660 (1990)
R.I. Gen. Laws §§ 11-55-2, 11-55-3 (Supp. 1990)
Va. Code Ann. §§ 18.2-433 (1988)

Secret Societies
N.C. Gen. Stat. §§ 14-12.2 to -.12.6 (1986)

Sentence Enhancement
Cal. Penal Code §§ 190.2(a)(16), 422.7, 1170.75, 1170.85 (West Supp. 1991)
Fla. Stat. Ann. § 775.085 (Supp. 1991)
Ill. Rev. Stat. ch. 38, § 1005-5-3.2 (Supp. 1991)
Mont. Code Ann. § 45-5-222 (1989)

Threats to Immigrants
R.I. Gen. Laws § 11-53-3 (Supp. 1990)

Wearing of Masks/Hoods/Disguises
Conn. Gen. Stat. Ann. § 53-37a (West 1985)
Fla. Stat. Ann. § 876.12 (West Supp. 1991)
Ga. Code Ann. § 16-11-38 (Harrison 1990)
Ill. Rev. Stat. ch. 38, para. 12-4 (Supp. 1991)
La. Rev. Stat. Ann. § 14:313 (West 1986)
Mich. Stat. Ann. § 28.628 (Callaghan 1990)
Minn. Stat. Ann. 609.735 (West 1987)
N.C. Gen. Stat. §§ 14-12.7 to -12.11, 14-12.14 (1986)
Okla. Stat. Ann. tit. 21, § 1301 (West 1983)
S.C. Code Ann. § 16-7-110 (Law. Co-op. 1985)
Tenn. Code Ann. § 39-17-309(c) (Supp. 1990)
Va. Code Ann. § 18.2-422 (1988)
W. Va. Code § 61-6-22 (1989)
Wis. Stat. Ann. § 939.641 (West 1985)